

## BOARD OF ZONING APPEALS MEETING

TIPP CITY, MIAMI COUNTY, OHIO

May 21, 2008

<b>Meeting</b>	Mr. Poff called this meeting of the Tipp City Board of Zoning Appeals to order at 7:30 p.m.
<b>Roll Call</b>	<p>Roll call showed the following Board Members present: Ron Poff, Stacy Wall, John Borchers and David Berrett. Others in attendance: City Planner/Zoning Administrator Matthew Spring, and Board Secretary Kimberly Patterson.</p> <p>Citizens attending the meeting: Ben Piper, Scott Etherington, Joe Bagi, Larry Jordan, Michael Huffman, Bud Schroeder, Paul Lee, Kathy Lee, Tom Rindler, and Cameron Glover.</p>
<b>Board Minutes 11-27-07</b>	Chairman Poff asked for discussion. There being none, Mrs. Wall <b>moved to approve the November 27, 2007, meeting minutes as written</b> , seconded by Mr. Poff. <b>Motion carried.</b> Ayes: Poff and Wall. Nays: None. Mr. Borchers and Mr. Berrett abstained from the vote.
<b>Board Minutes 2-20-08</b>	Chairman Poff asked for discussion. There being none, Mr. Berrett <b>moved to approve the February 20, 2008, meeting minutes as written</b> , seconded by Mrs. Wall. <b>Motion carried.</b> Ayes: Berrett, Wall, and Borchers. Nays: None. Chairman Poff abstained from the vote.
<b>Chairman's Introduction</b>	Chairman Poff explained the guidelines and procedures for the meeting and public hearings. He advised the applicants that a decision of the Board could be appealed to City Council within 10 days. If the Board granted the applicant's request, the applicant may file the appropriate permits after the 10-day waiting period has expired.
<b>Citizen Comments</b>	There were no citizen comments on items not on the agenda.
<b>Administration of Oath</b>	Mrs. Patterson, notary, swore in citizens wishing to speak and Mr. Spring.
<b>New Business Case No. 06-08: Scott Etherington 830 Cottonwood Drive Variance Request</b>	<p><b>New Business</b></p> <p><b>A. Case No. 06-08: Scott Etherington, contractor for Kathy Gilmore, owner - 830 Cottonwood Creek Drive, Tipp City - Lot: IL 2271</b> – The applicant requests a variance of 12' to the required rear yard setback of 40' noted in Code §154.042(C)(2)(b)</p> <p><b>Present Zoning District:</b> R-1B – Suburban Residential Zoning District</p> <p><b>Section(s):</b> §154.042(C)(2)(b)</p> <p>Mr. Spring stated that the applicant requested a variance of 12' to the required rear yard setback of 40' noted in Code §154.042(C)(2)(b)_in conjunction with the construction of an addition to the single family</p>

residence located at 830 Cottonwood Creek Drive. If approved, the addition would be 28' from the rear property line.

§154.042(C)(2)(b) indicates:  
*Minimum rear yard depth: 40 feet.*

Mr. Spring explained the procedural requirements to grant the variances in this case as outlined in Sections §154.175(E)(1)&(9) §154.175(C) and §154.175(D) of the Tipp City Code of Ordinances.

Mr. Spring stated that if the requested variance was granted, the applicant would be required to obtain an approved Zoning Compliance Permit and pay the required \$50 Permit fee.

Mr. Spring mentioned the following additional notes regarding the case:

- The property was located on a corner lot (Cottonwood Creek Drive and Burr Oak Drive). As such the property's front, rear and side lot lines (and setbacks) are delineated by Code §154.004 which defines a "front," "rear," and "side" lot lines:
- The property included a 10' utility easement on the side and rear property lines. The proposed addition would not encroach into these easements.
- The existing privacy fence surrounding the rear yard area would remain.
- The applicant would be required to obtain approved zoning and building permits upon any proposed construction.

Mr. Scott Etherington, contractor for Kathy Gilmore whom resides at 830 Cottonwood Creek Drive, stated that the proposed addition was for a private office off of the existing bedroom. Mr. Etherington stated that the exterior of the property would stay the same which was brick walls and cedar trim to match the existing. The existing fence would be removed to allow for equipment and then put back in the same spot after construction.

Mrs. Patterson stated there were no neighbor's comments received regarding this case.

Chairman Poff asked for further discussion. There being none, Mr. Berrett **moved to grant a variance of 12' to the required rear yard setback of 40' noted in Code §154.042(C)(2)(b) to construct an addition to the single-family residence located at 830 Cottonwood Creek Drive,** seconded by Chairman Poff. **Motion carried.** Ayes: Berrett, Poff, Wall, and Borchers. Nays: None.

**Case No. 07-08: B. Case No. 07-08: Ron Poff - 470 Hathaway Trail, Tipp City - Lot: IL 1703**

**Ron Poff  
470 Hathaway  
Variance  
Requests**

– The applicant requests a variance of 6' to the required setback of 10' noted in Code §154.059(D)(4), which requires all accessory structures to be setback a minimum of 10' from the primary dwelling.  
**Present Zoning District:** R-1C – Urban Residential Zoning District  
**Section(s):** §154.059(D)(4)

Mrs. Wall stated that this case involves the Board Chairman, who was the applicant. The question was raised if there was a conflict of interest or should the Board recuse themselves and just let Council make the decision on case. Mrs. Wall also noted the appearance of impropriety and believed as Board Members they could state with specificity that they would not have any conflict in hearing the case, however the appearance to the public, if the application was granted, it might look as though the case was just granted because Mr. Poff was the chairman of the board. Her concern was that the Board not hear the case and it be forwarded to Council to hear the case as an original board hearing and not as an appellate board.

Mr. Berrett stated that he thought the Board could hear the case.

Mr. Borchers noted that it was his past experience that Mr. Poff would have to have a representative for the case and to recuse himself from the meeting.

Mr. Spring stated that there was no specified procedure written in code. Mr. Spring noted that in general the concept of conflict of interest was a personal matter for a Board or Council Member and to essentially decide for themselves. Mr. Spring stated that he did have not the ability to tell the Board what to do in this situation and it would be a Board decision.

Chairman Poff stated that he did not have a representative present and did not mind going before City Council.

Mrs. Patterson noted that cases had been heard in the past without representation being present.

Board Members discussed the issue and came to the conclusion that Chairman Poff recuse himself and move forward with hearing the case without representation. Chairman Poff decided to recuse himself and allow the case to be heard without representation.

7:44 p.m. Chairman Poff recused himself.

Mr. Spring stated the applicant requested a variance of 6' to the required setback of 10' noted in Code §154.059(D)(4) in conjunction with the replacement of an existing accessory structure (shed) located at 470 Hathaway Trail. If approved, the accessory structure would be 4' from the primary dwelling.

Code §154.059(D)(4) indicates:

*A detached accessory building shall be at least 10 feet from any dwelling situated on the same lot.*

Mr. Spring explained the procedural requirements to grant the variances in this case as outlined in Sections §154.175(E)(1)&(9) §154.175(C) and §154.175(D) of the Tipp City Code of Ordinances.

Mr. Spring stated that if the requested variance was granted, the applicant would be required to obtain an approved Zoning Compliance Permit and pay the required \$40 Permit fee.

Mr. Spring mentioned the following additional notes regarding the case:

- The proposed shed will be 10' x 12' (120 sq. ft.)
- The existing shed (10' x 10') will be removed upon construction of the proposed shed.
- There is no record of an approved Zoning Compliance Permit (ZCP) on file for the existing shed. Therefore, the applicant will be required to obtain an approved ZCP, if the requested variance is granted.
- A portion of Inlot 1703 contains the FEMA 100 year flood plain as denoted in the 1992 Flood Plain Management Study conducted by Miami County. Accordingly, the applicant will be required to submit a FEMA Elevation Certificate for the shed prior to the issuance of the required Zoning Compliance Certificate and an "As-Built" of the same, post construction that demonstrates that the proposed shed lies outside the delineated flood plain.

Mr. Borchers inquired if the shed would be placed on permanent foundation and if the old shed could be moved. Mr. Spring stated that the old shed could be moved and that Mr. Poff had indicated that he would be pouring a new slab for the new proposed shed. Mr. Borchers asked if the shed would be connected to the slab. Mr. Spring stated that he believed that the shed would be attached to the slab.

Vice Chairperson Wall inquired if the variance was a conditional variance if granted, due to the elevation certificate. Mr. Spring stated that the variance would stand but there would be a chance that a Zoning Compliance Permit might not be issued because the applicant had to prove through an engineering study that the shed would not be placed in the delineated flood plain.

Mrs. Patterson stated there were no neighbors' comments received regarding this case.

Vice Chairperson Wall asked for further discussion. There being none, Mr. Berrett **moved to grant a variance of 6' to the required setback of 10' noted in Code §154.059(D)(4) in conjunction with the replacement of**

**an existing accessory structure (shed) located at 470 Hathaway trail,** seconded by Mr. Borchers. **Motion carried.** Ayes: Berrett, Borchers, and Wall. Nays: None.

7:53 p.m. Chairman Poff returned to the meeting.

**Case No. 08-08:  
Rindler  
517 Greensward  
Variance  
Request**

**C. Case No. 08-08: Tom and Lisa Rindler - 517 Greensward Drive, Tipp City - Lot: IL 3328** – the applicant requests a variance of 4' 6" to the required side yard setback of 10' noted in Code §154.043(C)(2)(c).  
**Present Zoning District:** R-1C – Urban Residential Zoning District  
**Section(s):** §154.043(C)(2)(c)

Mr. Spring stated that the applicant requested a variance of 4' 6" to the required side yard setback of 10' noted in Code §154.043(C)(2)(c) in conjunction with the construction of a 10' x 16' (160 sq. ft.) bedroom addition to the primary residence located at 517 Greensward Drive. If approved, the accessory structure would be 5' 6" from the side property line.

Code §154.043(C)(2)(c) indicates:

*Minimum side yard width on each side: 10 feet.*

Mr. Spring explained the procedural requirements to grant the variances in this case as outlined in Sections §154.175(E)(1)&(9) §154.175(C) and §154.175(D) of the Tipp City Code of Ordinances.

Mr. Spring stated that if the requested variance was granted, the applicant would be required to obtain an approved Zoning Compliance Permit and pay the required \$40 Permit fee.

Mr. Spring mentioned the following additional note regarding the case:

- The property contains 5' utility easements along both side property lines and 10' utility easements along the front and rear property line. The proposed addition will not encroach into any of these easements.

Tom Rindler, 517 Greensward Drive, stated that the addition would be a bedroom for his boy and to expand the existing kitchen.

Mr. Rindler stated that he spoke with all his neighbors and they seemed okay with the request. Mr. Rindler submitted a letter from Mr. Musick who resides at 517 Greensward; the letter stated as follows:

*"We have no objections to the variance request submitted by Tom and Lisa Rindler, of 517 Greensward Drive, for a new 10' x 16' bedroom addition that is adjacent to our side property line."*

Board Members found that the addition would match all existing finishes.

Vice Chairperson Wall thanked the applicant for such a detailed application.

Chairman Poff asked for further discussion. There being none, Mr. Borchers **moved to grant a variance of 4' 6" to the required side yard setback of 10' noted in Code §154.043(C)(2)(c) in conjunction with the construction of a 10' x 16' (160 sq. ft.) bedroom addition to the primary residence located at 517 Greensward Drive**, seconded by Mr. Berrett. **Motion carried.** Ayes: Borchers, Berrett, Wall, and Poff. Nays: None.

**Case No. 09-08  
Larry Jordan  
405 Bowman Ave  
Variance  
Request**

**D. Case No. 09-08: Larry Jordan - 405 Bowman Avenue - Inlot: IL 1617 –** The applicant requests a variance of 3' to Code §154.061(I) to allow a residential access drive 3' from the side property line rather than the required six (6) feet.

**Present Zoning District:** R-1C – Urban Residential Zoning District  
**Section(s):** §154.061(I)

**Staff Comments:** In conjunction with a proposed expansion of a residential driveway, the applicant seeks a variance of 3' to Code §154.061(I) to allow a residential access drive 3' from the side property line rather than the required six (6) feet.

Code §154.061(I) states:

*Residential access drives. Access drives within residential districts shall maintain a minimum setback distance of 6 feet from adjacent properties.*

Mr. Spring explained the procedural requirements to grant the variances in this case as outlined in Sections §154.175(E)(1)&(9) §154.175(C) and §154.175(D) of the Tipp City Code of Ordinances.

Mr. Spring stated that if the requested variance was granted, the applicant would be required to obtain an approved Zoning Compliance Permit and pay the required \$40 Permit fee.

Board Members found that the variance was for 3' to the current code, and that the existing driveway was currently 4' away from the property line, which meant that the applicant was only expanding the driveway 1'.

Larry Jordan, 405 Bowman Ave, stated that the driveway was 95' long and currently needs expanded to allow cars to pass as a convenience to the homeowners. Mr. Jordan hoped that the apron would remain the same. Mr. Jordan also noted that the outlet to the neighbor's rain gutters would be replaced at the time of the expansion.

Chairman Poff asked for further discussion. There being none, Mr. Berrett **moved to grant a variance of 3' to Code §154.061(I) to allow a residential access drive 3' from the side property line rather than the**



**Case No. 10-08  
Bud Schroeder  
1459 Harmony Dr  
Sign Variance  
Request**

**required six (6) feet**, seconded by Mrs. Wall. **Motion carried.** Ayes: Berrett, Wall, Borchers, and Poff. Nays: None.

**E. Case No. 10-08: Bud Schroeder – Schroeder Tennis Center - 1459**

**Harmony Drive, Tipp City - Inlot:** 3264 – The applicant requests variances to Code §154.096(D), §154.100(A)(1)(b), & §154.101(B) to allow the placement of a banner sign on the exterior fencing of an outdoor tennis court located at the Schroeder Tennis Center, 1459 Harmony Drive.

**Present Zoning District:** I-1 – Light Industrial Zoning District

**Section(s):** §154.096(D), §154.100(A)(1)(b), & §154.101(B)

Mr. Spring stated the following regarding code:

Definitions (Code § 154.092)

BANNER. A non-rigid cloth, plastic, paper, or canvas sign typically related to a special event or promotion that is cultural, educational, charitable, or recreational in its function, under the sponsorship of a for-profit establishment or business, or a public, private nonprofit or religious organization.

WALL SIGN. Any sign attached to, painted on, or erected against the inside or outside wall of a building or structure, with the exposed display surface of the sign in a plane parallel to the plane of the building or structure and extending less than 14 inches from the building or structure.

Mr. Spring also stated that the applicant stated in the application submission that the proposed sign was a "banner". The definition of a wall sign found in Code §154.092 indicates that the proposed banner sign was also a "wall sign".

Mr. Spring stated that Bud Schroeder, owner of Schroeder Tennis Center seeks the following three (3) variances to allow the placement of a banner sign on the exterior fencing of an outdoor tennis court located at 1459 Harmony Drive as follows:

**Variance 1**

Code §154.096(D) states:

*Prohibited Sign Locations*

*On any traffic control signs, construction signs, fences, utility poles, street signs, trees or other natural objects;*

Mr. Spring said that the applicant had indicated that the proposed sign would be placed on the exterior fencing of an outdoor tennis court located at 1459 Harmony Drive. Therefore, a variance to Code §154.096(D) is required to allow the placement of the proposed sign on a fence.

## **Variance 2**

Code §154.100(A)(1)(b) states:

### *Wall Signs*

#### *Placement*

*Signs may be attached to a building wall or architecturally integrated extension which faces a street, parking lot or service drive, or may be attached to a canopy which projects beyond the building, provided that no part of the sign may extend above the roof or canopy.*

Mr. Spring noted that Code §154.100(A)(1)(b) indicates that wall signs "may be attached to a building wall or architecturally integrated extension which faces a street, parking lot or service drive, or may be attached to a canopy which projects beyond the building, provided that no part of the sign may extend above the roof or canopy." The proposed sign would not be located on a building wall, extension, or canopy. Therefore a variance to Code §154.100(A)(1)(b) was required for placement of the proposed sign on a fence.

## **Variance 3**

Code §154.101(B) states:

*Banners. Banners are permitted only for the promotion of special events or for grand openings of businesses. A grand opening occurs only when there is a change of tenant or owner that brings a new business to a site.*

Mr. Spring also noted that the applicant had proposed a permanent wall sign that was a "banner" by definition and as also noted as a "banner" in the applicant's application material. Code indicates that "banners are permitted only for the promotion of special events or for grand openings of businesses". Therefore a variance to Code §154.101(B) was required for placement of a banner that would not be for the promotion of a special event or for a grand opening the business.

Mr. Spring explained the procedural requirements to grant the variances in this case as outlined in Sections §154.175(E)(1)&(9) §154.175(C) and §154.175(D) of the Tipp City Code of Ordinances.

Mr. Spring mentioned the following additional notes regarding the case:

- The Schroeder Tennis Center does not currently have any wall signage
- The Schroeder Tennis Center currently has two (2) un-permitted banners placed on the western-facing fencing of the outdoor tennis courts. These signs must be removed by the applicant as prohibited signs per Code §154.095.
- Schroeder Tennis Center has two (2) existing ground signs, with one being a nonconforming changeable copy sign (see



attached photos)

- If the variance is granted by the Board, a sign permit application is required to be completed by the applicant and can be approved administratively.

## Administration of Oath

Mrs. Patterson, notary, swore in Mr. Bud Schroeder and Mr. Paul Lee whom were not present initially when the oath was administered.

Mr. Schroeder, 7985 Cliffwood Drive, owner of Schroeder Tennis, stated that he had inquired with Mr. Spring regarding the particular rules for the banner.

Board Members found the following about the case: The existing slot ground sign could continue to be used as a non-conforming sign; Mr. Schroeder wanted the Board to look at the fence as a wall; Mr. Schroeder would take down the non-conforming signs that are currently on the fence; The monument sign and the changeable sign are allowable non-conforming signs; The monument/land mark sign was illuminated; the banner signs that were currently on the fence had been there for two – three years;

Board Members agreed that a banner was never intended to be a permanent structure and suggested that Mr. Schroeder lean towards a more permanent monument type sign that was currently allowed per the existing code.

Mr. Schroeder was more than willing to have the opportunity to hang a banner sign for a short time in order to attract attention from the Menard's grand opening traffic and entertain the idea of a more permanent sign for that area in front of the fence.

Chairman Poff asked if there were any citizens present that would like to comment on this case. Mr. Paul Lee, 152 W. Franklin Street, the owner of a lot just adjacent to the Schroeder Tennis Center. Mr. Lee stated that he did not oppose a temporary sign to capture the traffic from the Menard's grand opening, but if it was a permanent sign that he believed that Mr. Schroeder should comply with sign code like everyone else would have to. Mr. Lee stated again that he would not be opposed to something temporary to capture the traffic, but not a permanent banner.

Chairman Poff asked for further discussion. There being none Board Members agreed to modify the variance requests to add a time period of 90 days and to also add a fourth variance to Code Section(s) §154.092 also noted below.

### **Variance 1**

Mrs. Wall moved to grant a variance to Code §154.096(D) to allow the placement of a banner sign on the exterior fencing of an outdoor tennis court located at the Schroeder Tennis Center, 1459 Harmony Drive, and

that it be conditioned on the temporary time period this Board established, seconded by Mr. Borchers. **Motion carried.** Ayes: Wall, Borchers, Berrett, and Poff. Nays: None.

**Variance 2**

Mrs. Wall moved to grant a variance to Code §154.100(A)(1)(b) to allow the placement of a banner sign on the exterior fencing of an outdoor tennis court rather than a building wall, extension, or canopy located at the Schroeder Tennis Center, 1459 Harmony Drive, and conditioned upon the temporary time period this Board established, seconded by Mr. Berrett. **Motion carried.** Ayes: Wall, Berrett, Poff, and Borchers. Nays: None.

**Variance 3**

Mrs. Wall moved to grant a variance to Code §154.101(B) to allow the placement of a banner sign that will not be for the promotion of a special event or for a grand opening of the business on the exterior fencing of an outdoor tennis court located at the Schroeder Tennis Center, 1459 Harmony Drive, conditioned on the temporary time period this Board established, seconded by Mr. Borchers. **Motion carried.** Ayes: Wall, Borchers, Berrett, and Poff. Nays: None.

**Variance 4**

Mrs. Wall moved to grant a variance to Code §154.092 relating to temporary sign periods extending the temporary sign period from 30 days to 90 days beginning with June 16<sup>th</sup>, 2008 or the actual date of the grand opening of Menards to the public, seconded by Mr. Berrett. **Motion carried.** Ayes: Wall, Berrett, Poff, and Borchers. Nays: None.

**Case No. 11-08  
Michael Huffman  
Three Variance  
Requests**

**F. Case No. 11-08:** Michael Huffman - 121 W. Main Street and 118 W. Walnut Street Tipp City - **Inlot:** 3244 – The applicant requests the following:

**Variance 1**

A variance of 920.56 square feet to Code §154.044(C)(1)(a) for 118 W. Walnut Street to permit a lot split/replat, where the area of the lot would contain 7579.44 square feet rather than the minimum required 8,500 square feet.

**Variance 2**

A variance of 3.77' to Code §154.051(C)(2) to the required 4' eastern side yard setback of 121 W. Main Street (0.23').

**Variance 3**

A variance of 2.3' to Code §154.059(D)(3) to the required 10' setback of 118 W. Walnut Street for accessory structures with access from an alley (7.7').

**Zoning District:** CC/RA- Community Center/Old Tippecanoe City Restoration and Historic District and R-2 – Urban Residential Zoning District respectively

**Section(s):** 154.044(C)(1)(a), §154.051(C)(2), and §154.059(D)(3)

Mr. Spring stated that the applicant requested three (3) separate variances in conjunction with a requested lot split/replat of the tract located at 121 W. Main Street and 118 W. Walnut Street. The tract in

question was originally two (2) Inlots being Inlot 137 and Inlot 148 respectively, with each Inlot containing a single-family dwelling and associated accessory structures (detached garages). In 1998, the two (2) Inlots were replatted into a single Inlot of record, being Inlot 3244. Despite the 1998 replat, the underlying zoning remained the same. Thus, 121 W. Main Street is zoned CC/RA- Community Center/Old Tippecanoe City Restoration; and Historic District and 118 W. Walnut Street is zoned R-2 – Urban Residential Zoning District.

Mr. Spring also stated that the applicant now requested a lot split in order to replat the existing tract into two (2) Inlots of record. The proposed Inlots would be identical to the original Inlots 137 and 148 as noted above. However, the original nonconforming statuses of the original Inlots were lost at the time of the 1998 replat. Therefore, three (3) variances are needed to accomplish the requested lot split. It was important to note that all of the requested variances must be approved in order for the applicant to accomplish the requested lot split.

The requested variances are as follows:

**Variance 1**

A variance of 920.56 square feet to Code §154.044(C)(1)(a) for 118 W. Walnut Street to permit a lot split/replat, where the area of the lot would contain 7579.44 square feet rather than the minimum required 8,500 square feet.

Code § 154.044(C)(1)(a) states:

*Lot requirements*

*(a) Minimum lot area 8,500 sq. ft.*

Mr. Spring noted that the proposed Inlot would contain 7,579.44 sq. ft. Therefore, a variance of 920.56 sq. ft. was needed ( $8,500 - 7,579.44 = 920.56$ ).

**Variance 2**

A variance of 3.77' to Code §154.051(C)(2) to the required 4' eastern side yard setback of 121 W. Main Street (0.23').

Code § 154.051(C)(2) states:

*Yard requirements. Zero except if a side yard is provided; it should be a minimum of 4 feet. Where lot line abuts residentially zoned area without street separation, the minimum side or rear transitional setback distance shall be 25 feet in the depth and provided with a landscape screen or wall as defined in § 154.061.*

Mr. Spring also noted that the proposed Inlot does provide a side yard of 0.23'. Therefore a variance of 3.77' was needed ( $4 - 0.23 = 3.77$ ).

**Variance 3**

A variance of 2.3' to Code §154.059(D)(3) to the required 10' setback of 118 W. Walnut Street for accessory structures in residential districts with access from an alley (7.7').

Code §154.059(D)(3) states:

*A detached accessory building shall not exceed 14 feet in height nor be located closer to an alley than 10 feet if access is from an alley.*

Mr. Spring stated that the existing accessory structure (detached garage) was in a residential district (R-2), and does provide access from the alley to the east. Therefore a variance of 2.3' is needed ( $10 - 7.7 = 2.3$ ).

Mr. Spring reviewed the Procedural Requirements as follows:

Per Code §154.175(E)(2), the Board of Zoning Appeals has jurisdiction in this case to grant variance #1 as noted above:

*(E) The Board may grant variances only in the following instances and no others:*

*2. To permit the use of a lot or lots for a use otherwise prohibited solely because of the insufficient area or width of the lot or lots, but in no event shall the respective area and width of the lot or lots be less than 80% of the required area and width;*

Per Code §154.044(C)(1)(a) the minimum required area for Inlots within the R-2 – Urban Residential Zoning District is 8,500 sq. ft. Therefore, the maximum variance that the Board can grant is 1,700 square feet ( $[8,500 \times 80\% = 6,800]$  &  $[8,500 - 6,800 = 1,700]$ ). Thus, the BZA does have jurisdiction to grant the variance being  $\pm 89\%$  of the required area for Inlots in this zoning district.

Further, per Code §154.175(E)(1), the Board of Zoning Appeals also has jurisdiction in this case to grant variances #2 & #3 as noted above:

*1. To permit any yard or setback less than a yard or setback required by the applicable regulations.*

Staff noted the following procedural requirements must be met regarding the granting of variances and noted in Section §154.175(C):

*"The Board shall make written findings of fact, based on the particular evidence presented to it, that each and every one of the following standards for a variance are met by the application:*

- (1) The particular physical surroundings, shape, or topographical condition of the specific property would cause particular and extraordinary hardship to the owner if the literal provisions of the zoning code were followed;*
- (2) The alleged hardship has not been created by the applicant for the variance after the adoption of the zoning code;*
- (3) The granting of a variance will not be materially detrimental to the public health, safety, convenience, or general welfare or injurious to other property or*

improvements in the vicinity;

- (4) *The granting of a variance will not constitute a grant of a special privilege, denied by this chapter to other property in the same zoning district, or permit a use not expressly allowed by this chapter, or permit a use prohibited expressly or by implication to other property in the same district. No nonconforming use of neighboring lands, structures or buildings in the same district, and no permitted or non-conforming use of lands, structures, or buildings in other districts shall be considered grounds for the granting of a variance."*

Staff also noted the requirement of Section §154.175(D), which states:

*"The Board shall further make a written finding that the reasons set forth in the application justify the granting of a variance, and that the variance is the minimum variance that will make possible the reasonable use of the property. When a variance is denied, a written statement shall set forth the reason(s) therefore."*

Mr. Spring stated that if the requested variances were granted, the applicant would be required to seek Planning Board approval for the proposed lot split through the minor subdivision process delineated in Code §155.055 - §155.058.

Mr. Michael Huffman, 325 S. Hyatt Street, stated that the property was up for sale and the lot split was necessary. There was more interest in looking at the properties individually rather than a joint property.

Board Members found the following: The alley was a 12' dedicated alley; There had been no issues with maintaining the alley due to the proximity of the structures; Virtually all the homes in the area were built prior to code and were nonconforming in lot size; The lots would be put back to their original sizes.

Mrs. Patterson stated there were no neighbor's comments received regarding this case.

Chairman Poff asked for further discussion. There was none.

**Variance 1**

Mrs. Wall moved to grant a variance of 920.56 square feet to Code §154.044(C)(1)(a) for 118 W. Walnut Street to permit a lot split/replat, where the area of the lot would contain 7579.44 square feet rather than the minimum required 8,500 square feet, seconded by Mr. Borchers. **Motion carried.** Ayes: Wall, Borchers, Berrett, and Poff. Nays: None.

**Variance 2**

Mrs. Wall moved to grant a variance of 3.77' to Code §154.051(C)(2) to the required 4' eastern side yard setback of 121 W. Main Street (0.23'), seconded by Mr. Berrett. **Motion carried.** Ayes: Wall, Berrett, Borchers,



and Poff. Nays: None.

**Variance 3**

Mrs. Wall **moved to grant a variance of 2.3' to Code §154.059(D)(3) to the required 10' setback of 118 W. Walnut Street for accessory structures with access from an alley (7.7')**, seconded by Mr. Berrett. **Motion carried.** Ayes: Wall, Berrett, Poff, and Borchers. Nays: None.

**Old Business**

There was none.

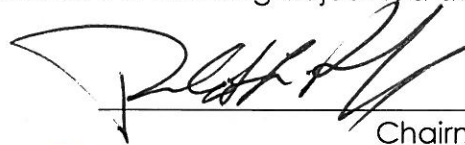
**Miscellaneous**

Mrs. Wall inquired if there had been any interest in replacing another Board Member. Mr. Spring stated there were none.

Mr. Poff solicited the audience for Board Members for BZA and to contact Mr. Spring for an application.

**Adjournment**

There being no further business, Mr. Borchers **moved to adjourn the meeting**, seconded by Mr. Poff and unanimously approved. **Motion carried.** Chairman Poff declared the meeting adjourned at 8:58 p.m.



Chairman Ron Poff

Attest:   
Mrs. Kimberly Patterson, Board Secretary